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Community & Economic Development

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AMESBURY CITY CLERK

62 Friend Street

Amesbury, MA 01913

April 22, 2021

City Clerk
City Hall
62 Friend Street
Amesbury, MA 01913

Dear City Clerk,

Please see attached for the Comprehensive Permit Rules of the Zoning Board of Appeals that were adopted by the Zoning Board of Appeals on December 9, 2004. These should be on file in your office for any applicant looking to file for a Comprehensive Permit under 760 CMR 56.

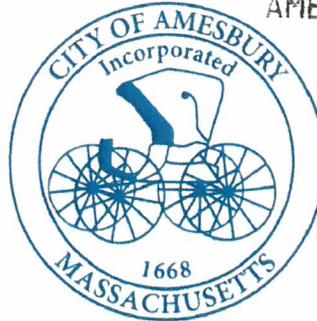
Respectfully,

Sharon McDermot
Chair, Zoning Board of Appeals

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AMESBURY CITY CLERK



City of Amesbury

Comprehensive Permit Rules of the Zoning Board of Appeals

Revised December 9, 2004

A handwritten signature in cursive script, appearing to read "Sharon A. McDermot".

Sharon McDermot, Chair

COMPREHENSIVE PERMIT RULES OF THE ZONING BOARD OF APPEALS

1. Purpose and Context:

These rules establish procedures for applications to the Zoning Board of Appeals (hereinafter "Board") for comprehensive permits granted under the Anti-Snob Zoning Act (Chapter 774 of the Acts of 1969), M.G.L. c. 40B, §§ 20-23. They are required by M.G.L. c. 40B, § 21, as amended by Stat. 1989, c. 593, and by 760 CMR 31.02. The purpose of that act and these rules is to facilitate the development of affordable housing in Amesbury. Further explanation of the background and purpose is provided in the regulations of the housing Appeals Committee, 760 CMR 30.01. Applications outside the urbanized area will be expected to submit a more detailed assessment of all associated environmental, social and economic costs of the proposed development.

These rules alone are not sufficient to describe comprehensive permit procedures before the Board. They must be read in conjunction with and implemented in a manner consistent with the complete regulations of the Housing Appeals Committee, 760 CMR 30.00 and 31.00: the Department of Housing and Community Development, and the "Guidelines for Home Loan Bank Summary," as well as the Zoning Bylaw Section V.E: the Amesbury Smart Housing Growth Bylaw. In addition, the Board's general rules for conduct of hearings under M.G.L. c.40A apply to comprehensive permit applications. In case of inconsistency or conflict between those general rules for conduct and these rules, these rules shall govern.

2. Definitions:

- (a) *Board* means the zoning board of appeals established under M.G.L. c. 40A §12;
- (b) *Local board* means any local board or official, including, but not limited to any board of survey; board of health; planning board; conservation commission; historical commission; water, sewer, or other commission or district; fire, police, traffic, or other department; building inspector or similar official or board; city council or board of selectmen. All boards, regardless of their geographical jurisdiction or their source of authority (this is, including boards created by special acts of the legislature or by other legislative action) shall be deemed local boards if they perform functions usually performed by locally created boards.

3. Materials for Review, Fees and Notice:

3:01: Application Materials: Consistent with 760 CMR 31.02(2), the application for a comprehensive permit shall consist of:

- (a) preliminary site development plans showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for

streets, drives, parking areas, walks and paved areas; and proposed landscaping improvements and other open areas within the site, such as forests, meadows, areas within wetlands and floodplains, as well as areas within the water resource protection district. The zoning district or districts, if more than one (1) district is involved shall also be shown on the plan. If abutting land is another district or town, this shall also be shown. An applicant proposing to rehabilitate four or fewer units may submit a sketch of the matters in sections 3.01(a) and 3.01(c), below, which need not have an architect's signature. All other developments with five or more units must have site development plans signed by a registered architect;

(b) a report on existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street elevations and zoning district, traffic patterns and character of open areas within the site and general neighborhood, such as forests, meadow, areas within wetlands and floodplains, as well as areas within the water resource protection district. This submission may be combined with that required in section 3.01(a) above;

(c) preliminary, scaled, architectural drawings. For each building the drawings shall be signed by a registered architect, and shall include typical floor plans, typical elevations that clearly describe the typical height, scaling and massing of all buildings and also identify construction type and exterior finish and fenestration;

(d) a tabulation of proposed buildings by type, size (number of bedrooms, floor area) and ground coverage, and a summary showing the percentage of the tract to be occupied by buildings, by parking and other paved vehicular areas, and by open areas;

(e) where a subdivision of land is involved, a preliminary subdivision plan in accordance with the Amesbury Subdivision Rules and Regulations;

(f) a preliminary utilities plan showing the proposed location and types of sewage, drainage, and Water facilities, including hydrants;

(g) documents showing that the applicant fulfills the jurisdictional requirements of 760 CMR 31.01, that is:

(i) the applicant shall be a public agency, a nonprofit organization, or a limited dividend organization;

(ii) the project shall be fundable by a subsidizing agency under a low and moderate income housing subsidy program;

(iii) the applicant shall control the site.

(h) a comprehensive list of requested exceptions to local requirements and regulations, including local codes, ordinances, bylaws or regulations;

- (i) Certified plan of land prepared by a registered land surveyor or a registered professional engineer;
- (j) Projects with *over eight (8) proposed units* shall contain a statement of the community impact due to the proposed development pertaining to traffic, public safety, schools, recreation, and the effect on open space and the natural environment;
- (k) A copy of the deed to the applicant's property showing the Registry of Deeds Book and Page number(s). If the property is under Purchase and Sales Agreement, a copy of said agreement shall also be provided;
- (l) An abutters list certified by the Town's Assessor's Office listing all 'abutters' as defined in G.L. c.40A., sec 11; and
- (m) Twenty-five (25) copies of said application/petition with attachments and exhibits shall be submitted to the Town Clerk upon filing (to be distributed to the ZBA Members, the ZBA Recording Secretary, and to all of the Town departments). Up to ten (10) additional copies shall be provided to the ZBA upon request.

3.02: Fees: Any application filed with the Board shall submit fees as described under this section.

3.02.1 Filing Fees: The application shall be accompanied by a non-refundable filing fee, based on a flat fee and the number of housing units proposed as follows:

**\$1500.00 base fee, plus
\$100.00 per unit proposed**

3.02.2 Consultant Fees: Consistent with M.G.L. Ch. 40B Sec. 21 and M.G.L. Ch. 44, Sec. 53G, the Town of Amesbury may retain one or more consultants in connection with its review of the application for a comprehensive permit. An initial **\$5,000.00** deposit to cover such consultant fees and costs is required at the time of application. If, during the course of its review the Town is notified in writing by its consultant(s) that consultant fees and costs are estimated to exceed the initial \$5,000.00 deposit, the Town may provide a written estimate of consultant fees and costs to the applicant and require the applicant to pay an additional deposit for a total equal to the estimated consultant costs and fees. In the event that consultant fees and costs do not equal or exceed the deposit amount, the remaining deposit balance shall be refunded by the Town to the applicant following completion of the Board's Review and final accounting to the Town by the consultant(s). In the event that consultant fees and costs exceed the deposit amount, the remaining balance shall be paid in full by the applicant to the Town following completion of the Board's Review and final accounting to the Town by the consultant(s).

3.02.3 Administrative Fee: A Recording Secretary, chosen by the Board, will be paid \$100.00 per meeting for the purposes of recording the meeting and handling the paperwork involved. A \$500.00 deposit to cover this Recording Secretary expense is required at the time of application with any remaining balance to be repaid to the applicant at the completion of the Board's review. Payment by the applicant of Recording Secretary expenses incurred by the Town of Amesbury in connection with the applicant's review process in excess of \$500.00 shall be paid in full at the completion of the Board's review.

All monies and fees submitted shall be deposited in a special non-interest bearing account for this purpose in accordance with the provisions of Chapter 44 Section 53G of the General Laws.

3.03: Within seven days of filing of the application, the Board shall notify each local official of the application by sending such official a copy of the list required by § 3.01(b), above. Based upon that list, it shall also, within the same seven days, invite the participation of each local official who has a substantial interest in the application by providing such official with a copy of the entire application.

3.04. Additional Requirements: The affordable units shall meet the criteria as outlined below:

3.04.1 AFFORDABILITY RESTRICTIONS-all applications

1) Restrictions for Homeownership Projects:

- a. The formula for determining resale price shall be the lesser of (i) the appraised value of the unit multiplied by a discount rate (established by a ratio between the original sales price of the affordable unit compared to the sales price of a market rate unit), or (ii) a price based on an annual debt service on a mortgage plus taxes, insurance and condominium fees (assuming a 10% down payment) that does not exceed 30% of the annual income of a household earning 70% of the median income for the Boston Metropolitan area.
- b. Upon resale, the owner of the affordable unit shall be required to actively market the affordable unit to eligible purchasers for up to 120 days.
- c. The Town shall have a right of first refusal to purchase the affordable units.
- d. Excess profits shall be returned to the Town to be used for affordable housing purposes.

- e. Approval by the Department of Housing and Community Development of deed riders shall be required.
 - f. There shall be a deed restriction that the affordable unit shall remain affordable for 99 years or the maximum time period allowed by law, whichever is greater.
- 2) Restrictions for Rental Projects:
- a. Affordable rents shall be limited to 30% of the annual income of a renter whose income is 70% of the median income or established pursuant to a rent schedule set by the Town.
 - b. Tenant selection, income guideline changes, and annual verification of income shall be by Amesbury Housing Authority Rules.

3.04.2 CONDOMINIUM DOCUMENTS

- 1. All condominium documentation shall state that:
 - a) Unit owner's percentage interest in the condominium shall be based on unit sales price (not square footage of the unit);
 - b) There shall be one vote per unit owner, unless M.G.L. c. 183A requires otherwise;
 - c) Condominium documents shall prohibit amendments to affordability provisions; and
 - d) Affordable units shall not be rented without the approval of the Town.

3.05. New England Fund (NEF) Applications

- 1) A complete application for a project receiving New England Fund financing, in addition to the requirements for a complete application listed herein above in Section 3.01, shall include:
 - a) project eligibility letter that provides the following information:
 - i) Name of applicant;
 - ii) Address of site;
 - iii) Number of units proposed;

- iv) Type of housing proposed (ownership or rental);
 - v) Name of housing program under which project eligibility letter or site approval letter is sought;
 - vi) Relevant details of the proposed project (e.g., percentage of affordable units, income-eligibility standards, duration of the affordable housing restrictions, how the applicant will comply with the limited dividend aspect of the program, etc.);
 - vii) A statement that the proposed project is generally eligible under the requirements of the NEF program, pending final review and approval;
 - viii) A statement by the Bank that it has not exceeded its lending limits with the FHLBB;
- a) A statement by the Bank that it has performed an on-site inspection of the property as well as a review of the project-eligibility application and has found that:
- i) The proposed housing design is generally appropriate for the site on which it is located;
 - ii) The proposed project appears financially feasible within the housing market in which it will be situated (based on comparable rental or sales figures);
 - iii) An initial pro forma has been reviewed and that the project appears viable from a development cost perspective; and
 - iv) The applicant meets the general eligibility standards of the NEF program.
- 1) A statement that the entity issuing the project eligibility letter has (1) notified the ZBA and Municipal Council, (2) provided a 30-day review period for local comment and (3) provided a list of comments from Local Boards and officials and neighbors;
 - 2) The information provided by the applicant to the entity issuing the project eligibility letter;
 - 3) Project pro forma (for “allowable acquisition costs” see Section 3.05.2 of these Rules; for “reasonable profits” see Section 3.05.1 of these Rules);
 - 4) Proposed regulatory agreement;

- 5) Proposed monitoring agreement;
- 6) Market feasibility report; and
- 7) General information on the applicant and projects that the applicant has completed, including comprehensive permit projects.

3.05.1 N.E.F. Reasonable Profits

1. The applicant's profits shall be reasonable and shall be limited as follows:
 - a) Homeownership Projects: 20% of total development costs (TDC) –TDC does not include overhead, profits and management consulting fees. Overhead shall not be more than 5% of the total development costs (net of profits, management consulting fees and overhead).
 - b) Rental Projects: Annual return of 10% of equity (equity being the difference between TDC, as defined by the NEF construction loan documents, and the amount of the construction loan. This difference may not be equal to the applicant's cash invested. TDC includes an allowable fee for applicant's overhead (5% of TDC, excluding site acquisition and applicant overhead and fee) and applicant fees (20% of TDC, excluding site acquisition and applicant overhead and fees)).

3.05.2 NEF ALLOWABLE ACQUISITION COSTS

- 1) The development pro forma must list a land value that is the lower of the
 - (i) last "arm's length transaction" (if within 3 years) plus reasonable carrying and/or maintenance costs or
 - (ii) (ii) the value under the pre-existing zoning regulations, plus reasonable carrying costs.⁷
- 2) "Last arm's length transaction" shall not involve an identity of interest between the seller and the buyer or any party related to the buyer;
- 3) "Pre-existing zoning regulations" concerns the time the option or purchase and sale agreement is executed;
- 4) "Reasonable carrying costs" include interest, taxes, insurance and the costs related to option agreements. These costs plus the acquisition costs cannot exceed the appraised value of the land under the density permitted by a comprehensive permit.

3.05.3 NEF DECISIONS

- 1) Any decision by the ZBA regarding a comprehensive permit application for an NEF project shall comply with the Rules set forth herein above in Section 5.
- 2) A decision by the ZBA approving a comprehensive permit application for an NEF project shall also contain, but not be limited to, the following conditions:
 - i) The applicant shall provide documentation that NEF funding has been obtained; and
 - ii) Legal review and approval by the Town of the regulatory and monitoring agreements.

3.05.4 REGULATORY AGREEMENTS

- 1) The purpose of the regulatory agreement is to provide legal assurances that the applicant will (i) construct and maintain the units in accordance with these Rules and (ii) be limited to a reasonable profit for the project (as set forth in Section 6.10 herein above) subject to the regulatory agreement.
- 2) The regulatory agreement shall:
 - i) Include a definition of “profit;”
 - ii) Limit profits on homeownership projects to 20% (see Section 3.05.1.1(a) herein above);
 - iii) Limit profits on rental projects to an annual return of 10% of equity (see Section 3.05.1.1 (b) herein above);
 - iv) Require a full compilation and certification of total development costs (net of related-party expenses) and total revenue, on a federal income tax basis, prepared and certified by a CPA, acceptable to the monitoring agent and the Town;
 - v) Be executed by the Town, the lending Bank, and the applicant; and
 - vi) Establish re-sale and re-rental controls to preserve long term affordability and to ensure its availability to Low or Moderate Income Households.

3.05.5 MONITORING AGREEMENTS

- 1) The purpose of the monitoring agreement is to provide legal assurances that there is a public entity (or a private entity responsible to a public entity) to oversee compliance with the terms of the regulatory agreement.

- 2) The Amesbury Housing Authority shall be the monitoring agent under any monitoring agreement.
- 3) The per unit fees for monitoring the affordable units shall be set by the Amesbury Housing Authority.

4. Review Fees:

4.01: If, after receiving an application the Board determines that it requires technical advice for review and analysis of a comprehensive permit application, it may employ outside consultants.

If, after receiving an application, the Board determines that in order to review that application it may employ outside consultants, then the Board may, by majority vote, require that the applicant pay a reasonable review fee for the employment of outside consultants chosen by the Board alone to assist the Board in the review of the application.

4.02 A review fee may be imposed when:

- (a) the work of the consultant consists of review of studies prepared on behalf of the applicant, and not independent studies on behalf of the Board,
- (b) the work is in connection with the applicant's specific project, and
- (c) all written results and reports are made part of the record before the board.

4.03: Pursuant to G.L.c 44, sec. 53G, and G.L.c.40B, sec.21 the Board, through these regulations, provides for an applicant's payment of the fees for outside consultants as set forth in the following section.

4.04: When conducting any hearing pursuant to G.L. c.40B, sec.21 (the subject of which is hereinafter referred to as a "proposal"), the Board may determine that the assistance of outside consultants is warranted due:

- (a) the complexity of the proposed project as a whole,
- (b) the complexity of particular technical issues,
- (c) the number of housing units proposed,
- (d) the size and character of the site,
- (e) the projected construction costs, and
- (f) fees charged by similar consultants in the area.

4.04.1 In hiring outside consultants, the Board may engage engineers, planners, traffic consultants, attorneys and/or other appropriate outside consultants who can assist the Board in reviewing and analyzing the proposal. The minimum qualifications shall consist of either of an educational degree in, or related to, the field at issue of three or more years of practice in the field at issue or a related field.

4.05: Failure to pay the review fee within ten calendar days of receiving written notification from the Board may be grounds for denial of the comprehensive permit application. Formal award of the contract shall be made only upon receipt of review fee by the applicant.

4.06: Prior to paying the review fee, the applicant may appeal the selection of the consultant to the Municipal Council provided:

(a) The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications;

(b) The minimum qualifications shall consist either of an educational degree in or related to the field at issue or three more years of practice in the field at issue or a related field;

(c) The required time limits for action upon the application by the Board shall be extended by the duration of the appeal. In the event that no decision is made by the Municipal Council within one month following the filing of the appeal, the selection made by the Board shall stand.

4.07: Each review fee shall be deposited in a special account established by the municipal treasurer pursuant to M.G.L. c. 44, § 53G.

(a) Funds from the special account may be expended only for the purposes described in section 4.02, above,

(b) Within 30 days of the completion of the project or of such time as the applicant formally withdraws the proposal, the applicant shall receive a final report of funds in the special account and shall be paid any unspent excess in the account, including accrued interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor shall provide the Board with documentation establishing such succession;

5. Public Hearing and Decision:

5.01: The Board shall hold a public hearing on the application within thirty (30) days of its receipt. It may request the appearance at the hearing of such representatives of local officials as it considers necessary or helpful in reviewing the application. In making its decision, the Board shall take into consideration the recommendations of local officials and the consistency of the proposed project to any comprehensive plans on file with the Town Clerk.

5.01.1: If the individual signing the application is unable to attend any hearings on his or her application, the Board shall require written authorization from the applicant that his

or her designated representative has consent to represent the applicant and/or to withdraw his or her application if necessary.

5.02: The Board shall render a decision, based on a majority vote of the Board, within forty (40) days after termination of the public hearing, unless such time period is extended by written agreement of the Board and the applicant. The hearing is deemed terminated when all public testimony has been received and all information requested by the Board has been received.

5.03: The Board may dispose of the application in the following manner:

- (a) approve a comprehensive permit on the terms and conditions set forth in the application,
- (b) deny a comprehensive permit as not consistent with local needs, or
- (c) approve a comprehensive permit with conditions with respect to height, site plan, size, shape or building materials that do not render the construction or operation of such housing uneconomic,

5.04 AMENDMENTS TO APPROVED PERMIT

- 1) If after the issuance of a comprehensive permit a applicant seeks to change its proposal as approved by the ZBA, it shall promptly notify the ZBA in writing, describing such change. Within 20 days the ZBA shall determine and notify the applicant whether it deems the change substantial or insubstantial (For Examples of substantial and insubstantial changes, see 760 CMR 31.03(2)).
- 2) If the ZBA determines the change is insubstantial, the comprehensive permit shall be modified to incorporate the change.
- 3) If the ZBA determines the change is substantial, it shall hold a public hearing within 30 days of its determination and issue a decision within 40 days of the close of the hearing, in accordance with Section 6.5 of these Rules. Only the changes in the proposal or aspects of the proposal affected thereby shall be at issue in the hearing.

6. Appeals:

6.01 If the Board approves the comprehensive permit, any person aggrieved may appeal within the time period and to the court provided in M.G.L. c. 40A, § 17.

6.02 If the Board denies the comprehensive permit or approves the permit with unacceptable conditions or requirements, the applicant may appeal to the Housing Appeals Committee as provided in M.G.L. c. 40B, § 22.